IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 19898 of 2005(R)

PETITIONER:

***1. AUGUSTINJU MARIAN,**
VALIYATHAIYIL, PARAVOOR, PUNNAPRA,
ALAPPUZHA.

***2. MARIA, W/O. LATE AUGUSTINJU MARIAN,**
VALIYATHAIYIL, PARAVOOR, PUNNAPRA,
ALAPPUZHA.

***ADDL. P2 IS IMPLEADED AS PER ORDER DATED 14/11/2005 IN IA NO. 16376/2005.**

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:
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1. UNION OF INDIA, REP. BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS, FREEDOM FIGHERS'
DIVISION, LOK NAYAK BHAVAN, KHAN MARKET,
NEW DELHI-110 003.

2. STATE OF KERALA, REP. BY THE SECRETARY,
GENERAL ADMINISTRATION (FFP.A), DEPARMENT,
GOVERNEMNT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.NOUSHAD THOTTATHIL, ADDL.CGSC
GOVERNMENT PLEADER SMT. N. SUDHADEVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 19898/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PROCEEDINGS OF THE DIST. COLLECTOR, ALAPPUZHA VIDE ORDER NO. R.DIS 7354/72 DT. 4/5/73.

EXT.P2. COPY OF THE APPLICATION BY THE PETITIONER FOR THE GRANT OF SSS PENSION DT. 21/2/2005.

EXT.P3. COPY OF THE AFFIDAVIT BY THE PETITIONER DULY ATTESTED BY THE JUDICIAL IST CLASS MAGISTRATE, ALAPPUZHA DT. 17/2/05.

EXT.P4. COPY OF THE NARC BY THE SUPDT. OF SPECIAL SUB JAIL, ALAPPUZHA DT. 20/10/98.

EXT.P5. COPY OF THE CO-PRISONER CERTIFICATE BY SRI. P.A. SOLOMON EX-MP DT. 3/2/2005.

EXT.P6. COPY OF THE LETTER NO. 52/CC/KER/20/2001-FF(SZ) DT. 28/1/2004 BY THE R1 TO THE R2.

RESPONDENT'S EXHIBITS NIL.

True copy

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T.R. Ramachandran Nair, J.

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W.P.(C).NO.19898 of 2005-R

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Dated this the 16th day of August, 2007

JUDGMENT

The petitioner is the widow of late Augustinju Marian who died during the pendency of the writ petition and the wife had been impleaded as additional petitioner, by order dated 14.11.2005 in I.A.No.16376/2005. The late husband of the petitioner was a freedom fighter who had actively participated in the Punnapra – Vayalar Movement during the freedom struggle. He was accused No.73 in case No.P.E.9/1122 ME (Crime No.48/1122 ME of Alleppey Police Station). He had undergone undertrial imprisonment in the defunct sub jail lock up at Alleppey during the period from 14.7.1122 ME to 3.3.1123 (20.10.1947). He was discharged under Section 207(1) of the Cr.P.C. Ext.P1 will show that the late husband of the petitioner was sanctioned Kerala Freedom Fighters' Pension as per order dated 4.5.1973. Ext.P2 is the application dated 21.2.2005 submitted by the late husband of the petitioner for pension under the SSS Pension. Along with Ext.P2, the order dated 20.10.1947 passed by the Special Magistrate Court, Alleppey was produced which shows that he was 73rd accused. Ext.P4 is the NARC issued by the Superintendent, Special Sub Jail,

Alappuzha and Ext.P5 is the co-prisoner's certificate issued by Shri P.A. Solomon, Ex.M.P. In the certificate issued by Shri P.A. Solomon, it has been clearly stated that the late first petitioner was lodged in the Sub Jail, Alleppey during the period from 14.7.1122 ME to 3.3.1123 ME (20.10.1947).

2. In the counter affidavit filed by the second respondent, the stand taken is that in the State pension application, the petitioner claimed that he suffered imprisonment for 2 ½ years which is now reduced to 7 months and hence the genuineness of the claim is doubtful. It is admitted therein that the order in case No.P.E.9/1122 and co-prisoner's certificate from Shri P.A. Solomon have been produced. It is also mentioned that from the judgment in case No.PE 9/1122 it is not possible to understand that from which date the petitioner was taken into police custody. It is further stated that since the NARC was issued from a jail which was in existence only from 1955, it cannot be considered as an acceptable evidence.

3. Learned counsel for the petitioner produced for perusal the order in case No.9/1122 ME dated 20.10.1947 of the Special Magistrate Court, Alleppey. The late husband of the petitioner is the 73rd accused in that case.

Paragraph 2 shows that accused Nos.4 to 73 were in custody along with several other accused. The operative portion of the order shows that accused No.73 has also been discharged as no primafacie case has been made out.

4. The difficulty for the State appears to be that the date when the petitioner's late husband was taken into custody, has not been mentioned in the said order. In fact, the certificate of Shri P.A. Solomon, Ex.M.P. Corroborates the claim raised by the petitioner and coupled with other evidence, the same can be accepted. The genuineness of the claim is stated as doubtful in view of the fact that in the application for State Freedom Fighters' Pension the petitioner had claimed 2 ½ years imprisonment but it is only 7 months in the application of Central Pension. It is clear that the applicants refer to these facts only from memory and because of those aspects the claim cannot be rejected as doubtful. The petitioner has been able to produce the order in case No.PE 9/1122 which shows that he was in custody. The date from which he was in custody, is mentioned in the certificate issued by Shri P.A. Solomon, Ex.M.P. The application of a freedom fighter cannot be thrown out for want of minute details as held by

this court in various decisions. The stand taken in this case by the State is therefore unsustainable. What follows is that the State Government has to recommend the case for consideration by the first respondent. It is for the Central Government to take a decision thereafter.

5. Therefore, there will be a direction to the second respondent to forward the verification report recommending the case of the petitioner for grant of pension under the SSS Pension Scheme within a period of six weeks from the date of receipt of a copy of this judgment. Within two months from the date of receipt of the application along with the verification report and recommendation of the State Government, the first respondent will consider and pass orders on the same. The claim for grant of arrears of pension, will also be considered by the first respondent in accordance with law, from the date of receipt of the application.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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